Revenue Ruling 77-78

Section 61 – Gross Income Defined

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Indians; headright income from mineral interests. Headright income from tribal mineral interests received by a competent Osage Indian is includible gross income; Revenue Ruling 70-116 clarified.

Advice has been requested whether Revenue Ruling 70-116 C.B. 11, which holds that headright income from tribal mineral interests held in trust by the United States for non-competent Osage Indians (tribal members who by treaty cannot alienate certain lands they own) is not includible in the gross income of such Indians, is also applicable to competent Osage Indians (tribal members who have received patents in fee to their land).

Section 61(a) of the Internal Revenue Code of 1954 defines gross income as all income from whatever source derived, unless excluded by law.

The holding in Revenue Ruling 70-116 signifies the acceptance by the Internal Revenue Service of the decision in Hayes Big Eagle v. United States, 300 F.2d 765 (ct. Cl. 1962). In that case the United States Court of Claims held that mineral headright income held in trust accounts for noncompetent Osage Indians was not subject to Federal income tax because certain amendments to the Osage Allotment Act, 45 Stat. 1478, section 1, and 52 Stat. 1034, section 3, contained language that implicitly exempted such mineral headright income from Federal income tax. In arriving at this conclusion, the court recognized the distinction between the Federal income tax treatment of mineral headright income of competent and noncompetent Osage Indians. The court cited Choteau v. Burnet, 283 U.S. 691 (1931), X-1 C.B. 355 (1931), in which the Supreme Court of the United States concluded that the tax status of the petitioner, as a competent Osage Indian, was no different from that of any other citizen of the United States and, therefore, mineral headright income received by the petitioner was subject to Federal income tax.

In discussing Choteau, the court, in Hayes Big Eagle, stated, in part, on page 767:

Choteau was a competent Indian so certified. The Supreme Court quoted the Revenue Act of 1918 saying that the income of "every individual" is subject to tax "from any source whatever" and went on to say that the act does not expressly exempt the sort of "person having petitioner's status," which was that of a competent Indian, who, since receipt of his certificate of competence, had been taxable. The Court did not go into the question of taxability of a noncompetent Indian except to suggest that in the case of Chouteau [sic] his income was beyond the control of the United States in the sense that he could use it as he pleased when he got it from the government and that the same was subject to tax when there is no intent definitely expressed by the statute to exempt such income from tax.

Therefore, pursuant to the Supreme Court's decision in Choteau, mineral headright income of competent Osage Indians is includible in their gross incomes under section 61 of the Code when received.

Accordingly, Revenue Ruling 70-116 is applicable only to the mineral headright income of non-competent Osage Indians and is not applicable to mineral headright income of competent Osage Indians

Revenue Ruling 70-116 is clarified.